

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: William MacLure	Team: Squad #6	CCRB Case #: 201705038	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 06/15/2017 2:45 PM	Location of Incident: West 52nd Street and 8th Avenue	Precinct: 18	18 Mo. SOL 12/15/2018	EO SOL 12/15/2018	
Date/Time CV Reported Thu, 06/15/2017 5:21 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 06/21/2017 11:33 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jason Brown	30226	950110	MTN PCT
2. Officers			MTN PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Katlyn Mcneil	11552	955173	MTN PCT
2. POM Salvatore Comodo	08832	960386	MTN PCT
3. POM Timothy Pappas	08945	961066	MTN PCT
4. POM Frank Delia	31618	955852	MTN PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jason Brown	Force: Police Officer Jason Brown used physical force against § 87(2)(b)	
B.POM Jason Brown	Force: Police Officer Jason Brown used physical force against § 87(2)(b)	
C. Officers	Abuse: Officers forcibly removed § 87(2)(b) to the hospital.	

Case Summary

On June 21, 2017, § 87(2)(b) filed this complaint with the CCRB over the phone. This case was closed pending litigation on August 14, 2017. This case was reopened on November 3, 2017.

On June 15, 2017, at approximately 2:45 p.m., § 87(2)(b) was walking north on 8th Avenue, in the vicinity of West 52nd Street, in Manhattan. At the intersection of 8th Avenue and West 52nd Street, § 87(2)(b) encountered off duty members of the service, PO Jason Brown, PO Katlyn McNeil, and PO Frank Delia, who were on their way to the 18th Precinct stationhouse to begin their tour. § 87(2)(b) asked attempted to walk around the officers, but PO Brown kept getting in § 87(2)(b)'s way. PO Brown grabbed § 87(2)(b)'s arms, picked him up off the ground, and “slammed” § 87(2)(b) onto the ground (**Allegation A: Force**, § 87(2)(g)). PO Brown started stepping on the left side of § 87(2)(b)'s face while he was on the ground, holding his foot in place for more than a minute (**Allegation B: Force**, § 87(2)(g)). Officers placed § 87(2)(b) into handcuffs on the ground. § 87(2)(b) was transported to § 87(2)(b) Hospital (also known as § 87(2)(b) Hospital (**Allegation C: Abuse of Authority**, § 87(2)(g)). At the hospital, § 87(2)(b) was arrested by members of the 18th Precinct detective squad due to two open I-cards.

Video footage from the Starbucks located at the northwest corner of 8th Avenue and West 52nd Street was received on May 2, 2018, from IAB. The full video can be found under Board Review 18; a SnagIt of the force used against § 87(2)(b) can be found under Board Review 19; and a summary of the video can be found under Board Review 20.

Findings and Recommendations

Allegation (A) Force: Police Officer Jason Brown used physical force against § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on December 11, 2017 (Board Review 01). On June 15, 2017, at approximately 2:45 p.m., § 87(2)(b) was walking north on 8th Avenue, in Manhattan, going to Central Park. As § 87(2)(b) approached 52nd Street, § 87(2)(b) saw a group of NYPD officers, some in uniform and some in plainclothes. When § 87(2)(b) reached the northwest corner of West 52nd Street and 8th Avenue, PO Brown walked in front of § 87(2)(b). § 87(2)(b) told PO Brown, “Excuse me,” multiple times, but PO Brown continued to stand in his way. When § 87(2)(b) moved to the left to try to go around PO Brown, PO Brown moved in that direction as well, preventing § 87(2)(b) from being able to continue walking north on 8th Avenue. § 87(2)(b) told PO Brown, “Officer, excuse me please. I’m in a rush to take care of my business,” and, “Please excuse me, I gotta go.” PO Brown did not respond. § 87(2)(b) asked the officers to leave him alone. § 87(2)(b)'s hands were at his sides the whole time he was speaking with PO Brown. § 87(2)(b) spit on the ground “way out of the officers reach.” § 87(2)(b) denied that he ever tried to spit at the officers. § 87(2)(b) told PO Brown that he was related to § 87(2)(b) § 87(2)(b) at some point, but he could not remember when. PO Brown grabbed § 87(2)(b)'s arm and pulled them behind his back. PO Brown picked § 87(2)(b) up off the ground while holding his arms and then “slammed” the right side of § 87(2)(b)'s face and the front of his torso onto the sidewalk. § 87(2)(b) sustained an injury to his lip and was bleeding.

PO Brown was interviewed at the CCRB on March 14, 2018 (Board Review 02). PO Brown was walking on 8th Avenue to the 18th Precinct stationhouse with PO McNeil and PO Delia. PO Brown, PO McNeil, and PO Delia were all off duty, in plainclothes, and were on their

way to begin their tours at 3:00 p.m. At the northwest corner of 52nd Street and 8th Avenue, PO Brown, PO McNeil, and PO Delia stopped in front of a Starbucks coffee shop because they saw PO Salvatore Comodo and PO Timothy Pappas, of the 18th Precinct, dealing with an assault. PO Brown believed PO Comodo was at the corner, but he was not sure. PO Brown, PO McNeil, and PO Delia stopped to see if PO Comodo and PO Pappas needed assistance.

A few minutes later, he looked to his left and saw § 87(2)(b) a few feet away, blocking the entrance to the Starbucks coffee shop. § 87(2)(b) was yelling obscenities, screaming, and spitting while he was yelling. PO Brown believed that § 87(2)(b) was intentionally spitting, but did not know where the spit landed. PO Brown was intimidated by § 87(2)(b) given he was larger than PO Brown. PO Brown was 6'0" tall and 220 pounds; § 87(2)(b) was 6'1" tall and 206 pounds. PO Brown instructed § 87(2)(b) to leave the area at least three times. § 87(2)(b) did not move and continued screaming after PO Brown instructed him to leave the area. PO Brown did not remember if he issued any other commands to § 87(2)(b). PO Brown denied that § 87(2)(b) ever attempted to leave the area. The officers never prevented § 87(2)(b) from leaving. PO Brown did not remember if § 87(2)(b) ever told an officer to get out of his way.

After a couple of minutes, § 87(2)(b) took a step towards PO McNeil and threatened her saying, "I'm gonna spit in your mouth, bitch." PO Brown did not remember PO McNeil saying anything in response. Soon after, § 87(2)(b) pointed at PO Brown's firearm, the outline of which was visible under his shirt, on his side. PO Brown did not remember what § 87(2)(b) stated in regards to the firearm, but remembered that § 87(2)(b) said "gun" or "firearm." § 87(2)(b) was moving towards PO Brown, making PO Brown feel that § 87(2)(b) was trying to fight him. When § 87(2)(b) was one foot away from PO Brown, PO Brown took § 87(2)(b) to the ground by putting his right arm over the back of § 87(2)(b)'s shoulders and using the weight of his body to flip § 87(2)(b) over. PO Brown's left hand was probably touching § 87(2)(b)'s left arm. § 87(2)(b) landed face first on the ground. § 87(2)(b)'s head may have hit the sidewalk when he fell to the ground. PO Brown did not use any additional force to take § 87(2)(b) to the ground. PO Brown landed on the ground with § 87(2)(b). PO Brown brought § 87(2)(b) to the ground with the intention of placing him into handcuffs. § 87(2)(b) would have been placed under arrest for refusing to leave the area and threatening people. PO Brown believed that § 87(2)(b) was bleeding from the mouth. On the ground, § 87(2)(b) was screaming, cursing, and saying he was § 87(2)(b)'s nephew. PO Brown did not remember if § 87(2)(b) stated that he was § 87(2)(b)'s nephew before he was on the ground. PO Brown thought that § 87(2)(b) was a threat to everyone in the area because he was blocking the door to the store, threatening to spit in an officer's mouth, "squaring off" with PO Brown, referencing PO Brown's firearm, and blocking pedestrian traffic during a busy time.

PO McNeil was interviewed at the CCRB on March 13, 2018 (Board Review 03). PO McNeil's statement was mostly consistent with PO Brown's statement. Prior to PO Brown taking § 87(2)(b) to the ground, § 87(2)(b) told PO McNeil to "get out of his fucking way before he spit in [her] fucking face." PO McNeil immediately responded "okay" and got out of § 87(2)(b)'s way, moving west on 52nd Street. § 87(2)(b) continued to scream "gibberish," expletives, and saying repeatedly that he was § 87(2)(b)'s nephew. § 87(2)(b) was moving his chest forward and imposing his body towards numerous officers in the group. § 87(2)(b) was about arms distance from the other officers. § 87(2)(b) was also spitting in arbitrary directions multiple times. § 87(2)(b) did not make any physical contact with PO McNeil or other officers during the encounter. PO McNeil did not remember if any officers issued § 87(2)(b) any commands. After moving west on 52nd Street, PO McNeil turned away from § 87(2)(b) and put

her backpack down to retrieve her handcuffs. PO McNeil did not witness the takedown of § 87(2)(b) because her back was turned. PO McNeil turned back around and § 87(2)(b) was already on the ground being handcuffed. PO McNeil felt that she might need her handcuffs because she thought § 87(2)(b) might need to go to the hospital as an emotionally disturbed person. After hearing § 87(2)(b) yell about being § 87(2)(b) § 87(2)(b)'s nephew and seeing that he was irate, she believed he was not in the "right state of mind." Additionally, PO McNeil had an encounter with § 87(2)(b) a few months prior to this incident during which he was yelling outside a T-Mobile Store. PO McNeil felt the officers would not have been doing their jobs if they let § 87(2)(b) continue up the street because he could have hurt someone and all of the officers understood that § 87(2)(b) needed to go to the hospital. PO McNeil observed blood coming from § 87(2)(b)'s mouth but did not know how he sustained this injury.

PO Delia was interviewed at the CCRB on March 28, 2018 (Board Review 04). PO Delia's statement was consistent with PO Brown's statement. PO Delia stated that § 87(2)(b) told PO Brown, "You must be a fucking cop. I see your gun," or something along those lines.

PO Comodo was interviewed at the CCRB on April 10, 2018 (Board Review 05). PO Comodo's statement was consistent with PO Brown's statement.

§ 87(2)(b)'s (Board Review 01), PO Brown's (Board Review 02), PO McNeil's (Board Review 03), PO Delia's (Board Review 04), and PO Comodo's (Board Review 05) statements were all consistent with their statements in the Unusual Occurrence Report prepared regarding this incident (Board Review 06). The report indicated that § 87(2)(b) screamed at PO McNeil, "Move you bitch or I'll spit on you. I'm § 87(2)(b) § 87(2)(b)'s nephew. Suck my dick you white bitch."

Video footage from Starbucks (Board Reviews 18-20) depicts § 87(2)(b) stepping towards PO McNeil and saying something to her. PO McNeil then walks behind PO Brown, puts down her backpack, and removes her handcuffs. Meanwhile, § 87(2)(b) proceeds to speak with PO Brown stepping towards him at one point. PO Brown places his right hand on § 87(2)(b)'s chest and moves § 87(2)(b) back a step. At 2:46:47 in the video, § 87(2)(b) thrusts his head towards PO Brown, who is only partially visible as he is being blocked by § 87(2)(b)'s body and the door frame. § 87(2)(b) immediately steps to the left after moving his head towards PO Brown. PO Brown grabs § 87(2)(b) by putting his right arm in front of § 87(2)(b)'s left arm behind, and with his body positioned on § 87(2)(b)'s right side. PO Brown brings § 87(2)(b)'s body to the right, around his own body, and down to the ground. § 87(2)(b) appears to land face first on the ground, but his head and body are blocked by the bottom of the door to Starbucks.

The TRI report (Board Review 07) prepared regarding this incident noted that § 87(2)(b) approached PO Brown in a violent and aggressive manner. The report also noted that the only force used by PO Brown was a forcible takedown for the purpose of self-defense.

Medical records regarding § 87(2)(b)'s treatment at § 87(2)(b) Hospital (Board Review 08 and 09) indicated that § 87(2)(b) was brought in by NYPD as an emotionally disturbed person because he was extremely agitated and spitting. § 87(2)(b) had laceration to his lip and a history of bipolar and schizophrenia.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person into custody. In determining whether the use of force is reasonable, members of the service should consider the following: the nature and severity of the circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of the service, or bystanders; and the size, age, and condition of the subject in comparison to the MOS. Patrol Guide Procedure 221-01, "Force Guidelines" (Board Review 10).

Members of the service should apply no more than the reasonable force necessary to gain control, Patrol Guide Procedure, 221-02, “Use of Force” (Board Review 11).

An emotionally disturbed person is a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. If an emotionally disturbed person’s actions constitute an immediate threat of serious physical injury or death to himself or others take reasonable measures to terminate or prevent such behavior. When the person has been restrained have the person removed to the hospital in an ambulance, Patrol Guide Procedure 221-13, “Mentally Ill or Emotionally Disturbed Persons,” (Board Review 12).

All parties testified that § 87(2)(b) was claiming he was related to § 87(2)(b) § 87(2)(b) and was spitting, § 87(2)(g)

§ 87(2)(g)

Allegation (B) Force: Police Officer Jason Brown used physical force against § 87(2)(b)

It is disputed whether or not PO Brown stepped on § 87(2)(b) s head. § 87(2)(b) (Board Review 01) stated that, after he was taken to the ground, PO Brown stepped on the left side of his head, holding his foot in place for more than a minute. § 87(2)(b) told PO Brown, “Get the fucking foot off me.” Officers placed § 87(2)(b) into handcuffs while he was on the ground, but he was not sure who did this or at what point. PO Brown had his foot on § 87(2)(b) s face for a couple of minutes. § 87(2)(b) felt like he was passing out while on the ground, but did not allege he had additional physical injuries, aside from the laceration to his lip.

PO Brown (Board Review 02) denied that he ever placed his foot on § 87(2)(b) s head or kicked § 87(2)(b) s head. PO Brown never heard § 87(2)(b) state, “Get the fucking foot off me.” PO Brown did not see any additional injuries on § 87(2)(b) aside from the laceration to his lip.

PO McNeil (Board Review 03), PO Delia’s (Board Review 04), and PO Comodo’s (Board Review 05) statements were all consistent with PO Brown’s.

Video footage (Board Reviews 18-20) does not capture § 87(2)(b) s head while he is on the ground because it is blocked by the bottom of the door to Starbucks. Additionally, once § 87(2)(b)

§ 87(2)(b) is on the ground, various officers assist in holding him down, blocking most of his body from view. An unknown female bystander proceeds to stand between the camera and the door, blocking the view of the officers and § 87(2)(b).

The Investigating Supervisor's Assessment Report (Board Review 13) prepared regarding this incident noted that § 87(2)(b) alleged that PO Brown kicked him in the head and that all officers denied this allegation.

No injuries are visible in either of § 87(2)(b)'s arrest photos (Board Review 17).

§ 87(2)(b)'s medical records (Board Reviews 08 and 09) did not reference any injuries aside from a lip laceration. There was no reference to an officer stepping on § 87(2)(b)'s head.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officers forcibly removed § 87(2)(b) to the hospital.

It is undisputed that § 87(2)(b) was transported to § 87(2)(b) Hospital via ambulance from the scene.

As discussed above, § 87(2)(b) (Board Review 01), PO Brown (Board Review 02), PO McNeil (Board Review 03), and PO Delia (Board Review 04) all stated that § 87(2)(b) was spitting and stating that he was related to § 87(2)(b). § 87(2)(b) PO Brown was the only officer who did not think that § 87(2)(b) was emotionally disturbed.

PO McNeil (Board Review 03) took PO Comodo's radio and requested an ambulance to respond to the location and take § 87(2)(b) to the hospital as an emotionally disturbed person. An ambulance and additional on duty officers from the 18th Precinct responded to the location. On duty officers escorted § 87(2)(b) to the hospital, but PO McNeil did not know who.

As noted above, § 87(2)(b)'s medical records (Board Review 08 and 09) indicated that he had a history of § 87(2)(b).

The Medical Treatment of Prisoner Report prepared regarding this incident (Board Review 14) noted that § 87(2)(b) was initially transported to the hospital as an EDP.

An emotionally disturbed person is a person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others. If an emotionally disturbed person's actions constitute an immediate threat of serious physical injury or death to himself or others take reasonable measures to terminate or prevent such behavior. When the person has been restrained have the person removed to the hospital in an ambulance, Patrol Guide Procedure 221-13, "Mentally Ill or Emotionally Disturbed Persons," (Board Review 12).

While PO Brown denied that he considered § 87(2)(b) an emotionally disturbed person at the time of this incident, all other officers believed § 87(2)(b) to be emotionally disturbed, which is corroborated by police documentation and medical records. § 87(2)(g)

Civilian and Officer CCRB Histories

- This was § 87(2)(b)'s first complaint with the CCRB (Board Review 15).
- PO Brown has 14 allegations stemming from seven cases over his six year tenure with the NYPD. None of the allegations are substantiated. PO Brown had two previous physical force allegations in CCRB cases 201308721 and 201704107, which were exonerated and unfounded, respectively. PO Brown had two physical force allegations after this incident in CCRB cases 201800298, which was closed as complainant uncooperative, and 201800870, which is still under investigation.

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation because § 87(2)(b) sustained physical injuries and arrested without being issued a DAT.
- § 87(2)(b) had not filed a notice of claim regarding this incident, but has repeatedly called the investigator to indicate that he plans to file a lawsuit regarding this incident.
- § 87(2)(c)

Allegations not pleaded

- **Force:** Chokehold: Though the video footage shows that PO Brown had his right arm close to § 87(2)(b)'s face/neck area, given that § 87(2)(b) did not allege a chokehold was used against him and video footage was inconclusive regarding whether or not PO Brown placed § 87(2)(b) into a chokehold, a chokehold allegation was not pleaded.

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

